IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No.1 of 2004
With
SPECIAL CIVIL APPLICATION No.12508 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
&
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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VOLTAS LTD. - Applicant
Versus
STATE OF GUJARAT - Respondent

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Appearance :
MR KH KAJI for Applicant.
MR KAMAL TRIVEDI, Advocate General ***WITH***
MS SANGEETA VISHEN, Assistant Government Pleader for Respondent.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date :04/09/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The Gujarat Sales Tax Tribunal at Ahmedabad has referred the following question of law under Section 69 of the Gujarat Sales Tax Act, 1969, for the opinion of this Court.

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the applicant's works contract for fabrication and installation of air-conditioning plants falls under Entry 2 and, therefore, taxable at the rate of 15% and not under Entry 5 under which it is taxable at the rate of 5%, of the Schedule to the notification dated 18-10-93 issued under Section 55A of the Gujarat Sales Tax Act, 1969?*

2. The facts emerging from the record of the case, which have necessitated the reference of the above mentioned question of law for the opinion of this Court, are as under:

2.1 M/s.Voltas Limited is a company incorporated under the provisions of the Companies Act, 1956. It is registered as a dealer under the provisions of the Gujarat Sales Tax Act, 1969 ("the Act" for short).

The company, amongst other activities, is engaged in the business of carrying out jobs involving design, supply and installation of air-conditioning plants, which are treated by the company as indivisible works contracts. Earlier, the different rates of tax on sale of goods involved in execution of works contracts, as set out in Part-A of Schedule II-A of the Act, were as under:

Sr. No.	**Description of works contract**	**Entry No. in Schedule-IIA of the Act**	**Regular rate of tax**
1.	Installation of air-conditioners and A.C. Coolers and for repairs thereof.	67	18%
2.	Furniture and fixtures partitions including contracts for interior decoration and repairs thereof	104	8%
3.	Fabrication and installation of lifts or elevators or escalators and for repairs thereof	120	12%
4.	Fabrication and installation of plant and machinery and repairs thereof	39	8%
5.	Construction of bodies on chassis of Motor vehicles including three wheelers and for repairs thereof	128(5)	4%
6.	Ship building including construction of barges, Ferries, Tugs Trawlers or Dredgers and for repairs thereof	186	4%

2.2 Section 55A of the Act empowers the Commissioner to permit a dealer to pay at his option in lieu of the amount of tax leviable from him under

Section 7 or Section 8, a lump sum tax by way of composition at the rate or the rates as may be fixed by the Government by notification in the official gazette having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract. In exercise of powers conferred by Section 55A of the Act, the Government of Gujarat issued Notification dated October 18, 1993 ("the notification" for short), which was as under:

> *G.N.F.D.No.(GHN-28)GST-1093-S.(55)(A)TH dtd. 18/10/93. In exercise of powers conferred by Section 55A of the Gujarat Sales Tax Act, 1969 (Guj. 1 of 1970), the Government of Gujarat hereby fixes the rate of composition payable in lieu of the amount mentioned in Column (3) of the schedule here to in respect of each works contract shown in column (2) of the said schedule, having regard to the incidences of the tax on the nature of goods involved in the execution of total value of the works contract.*

Sr. No.	Description of works contract	Rate of composition
1.	Works contract for civil works like construction of buildings, bridges or roads, and for repairs thereof	2%
2.	Installation of air-conditioners and A.C. Coolers	15%
3.	Furniture and Fixtures, Partitions including contracts for interior decoration	5%
4.	Fabrication and installation of lifts or elevators or escalators	10%
5.	Fabrication and installation of plant and machinery	5%
6.	Construction of bodies on chassis of motor vehicles including three wheelers	3%
7.	Ship-building, including construction of barges, ferries, tugs, trawlers or dredgers	2%
8.	Works contracts other than those mentioned above	12%

2.3 M/s.Voltas Limited undertook air-conditioning and refrigeration job (Water Chilling Plant) at Vapi in Gujarat for M/s. Anupam Colours & Chemicals Industries, for a lump sum amount of Rs.3,99,000/- as per the contract deed dated October 22, 1993. The company was of the view that fabrication and installation of Water Chilling Plant was a works contract covered under Entry 5 of the Schedule to the notification attracting the rate of composition at 5% and was not covered by Entry 8 of the Schedule, i.e. residuary entry attracting the rate of composition at 12%. Therefore, the company filed an application under Section 62 of the Act

before the Deputy Commissioner of Sales Tax (Legal), Gujarat State, Ashram Road, Ahmedabad, and requested him to determine whether the air-conditioning and refrigeration plants were covered under Entry 5 of the Schedule to the notification and the company was liable to pay composition rate of tax at 5% only. It was also mentioned in the said application that in case the answer was in negative, it should be determined as to under which Entry of the Schedule to the notification, the air-conditioning contract undertaken by the company would fall and which composition rate of tax would be payable.

2.4 On the basis of the materials placed before him, the Deputy Commissioner by his order dated October 16, 1996 held that Entry 5 relating to “Plant & Machinery” was for ordinary movable machinery or conglomerate thereof whereas the company had carried out works contract for air-conditioning plant, which was covered by Entry 2 because the company had to air-condition the plant erected by it. The Deputy Commissioner noticed that besides the company’s plant being machinery and plant, the

company had to air-condition the same, and, therefore, the works contract was covered by Entry 2 of the notification. The Deputy Commissioner was of the view that the rates for composition were not fixed by the Legislature, but were fixed by the Government and, therefore, it was necessary to ascertain the intention of the Government in providing different rates of composition. On critical examination of notification, the Deputy Commissioner noticed that composition rates were 2% or 3% less than the rates of taxes mentioned in the Schedule to the Act and, therefore, in determining/fixing the rates of composition, the intention of the Government was to give relief to the extent of 3% with reference to the works contract covered by Entry 2 of the Schedule to the notification. On the basis of the above mentioned conclusions, the Deputy Commissioner by his order dated October 16, 1996 held that the works contract entered into by the company with M/s. Anupam Colours & Chemical Industries was covered by Entry 2 of the Schedule to the notification and rate for payment of composition applicable was 15%.

2.5 Feeling aggrieved by the order made by the Deputy Commissioner, Sales Tax, under Section 62 of the Act, the company preferred Appeal No.16 of 1996 before the Gujarat Sales Tax Tribunal at Ahmedabad. During the course of regular assessment for the assessment year 1993-94, the Sales Tax Officer 1(4) following the decision of the Deputy Commissioner of Sales Tax dated October 16, 1996, assessed the company at the rate of 15% of the value of the works contract by his order dated October 23, 1997. The company, therefore, preferred an appeal against the said assessment order before the Assistant Commissioner of Sales Tax, Ahmedabad, who by his order dated May 6, 1999 also took the view that the works contract of the company was liable to be taxed at the rate of 15% under Entry 2 and not at the rate of 5% under Entry 5 of the Schedule to the notification. The company, therefore, preferred another appeal being Second Appeal No.97 of 2001 before the Gujarat Sales Tax Tribunal at Ahmedabad.

2.6 Appeal No.16 of 1996 and Second Appeal No.97 of 2001 were heard together by the Tribunal. The

Tribunal noticed that in simple plant and machinery, the contractor would complete the erection of plant and machinery and go away, but nothing would be produced by the said contractor whereas in the case of fabrication and installation of air-conditioning plant, production of cooling of air is done or provided at the time of erection of the plant and machinery and, therefore, air-conditioning plant would be covered under Entry 2 of the Schedule to the notification. The Tribunal noticed three different entries, which were in existence under the Act at the time when notification was issued under Section 55A of the Act and held that if the Government had desired to give separate benefit to air-conditioning plant, there would have been a separate entry in the Schedule to the said notification, but no separate entry was provided by the Government at all, which suggested that Entry 2 of the Schedule to the notification covered the fabrication and installation of air-conditioning plant. The Tribunal noticed the principle that a specific entry prevails over general entry and held that Entry 5, which generally dealt with simple fabrication and installation of plant and

machinery would not be applicable to air-conditioning plant, which is covered by Entry 2 of the Schedule to the said notification. In view of these conclusions, the Tribunal dismissed both the appeals vide judgment dated December 2, 2002.

2.7 Against the decision of the Tribunal rendered in Appeal No.16 of 1996 and Second Appeal No.97 of 2001, the remedy of the company was to file reference application under Section 69 of the Act. However, the company was of the view that the remedy of filing of reference application under Section 69 of the Act was not an adequate remedy available to it and was illusory in view of the fact that it was seriously debatable whether the Tribunal had any jurisdiction to stay the recovery of dues having regard to the provisions of Section 69(6) of the Act. The company, therefore, invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution and challenged the decision dated December 2, 2002 rendered by the Gujarat Sales Tax Tribunal in Appeal No.16 of 1996 and Second Appeal No.97 of 2001 by way of filing Special Civil

Application No.12508 of 2002. The order-sheet of Special Civil Application No.12508 of 2002 indicates that several directions were issued therein, pursuant to which the Tribunal has referred the above quoted question of law for the opinion of this Court. By an order dated February 16, 2004 passed in Special Civil Application No.12508 of 2002, it was directed that the petition should be listed for hearing along with Sales Tax Reference No.1 of 2004. This is how the Reference has been tagged with the petition filed under Article 226 of the Constitution.

3. As common questions of facts and law arise for consideration of this Court, this Court proposes to dispose of Sale Tax Reference No.1 of 2004 and Special Civil Application No.12508 of 2002 by this common judgment.

4. Mr.K.H.Kaji, learned counsel for the assessee, contended that the installation of air-conditioners and A.C. Coolers, as mentioned in Entry 2 of the Schedule to the notification, connotes installation of room air-conditioners or window air-

conditioners because the words 'air-conditioners' are followed by words A.C. Coolers and, therefore, fabrication and installation of air-conditioning plant would not fall under Entry 2, but would fall under Entry 5 of the Schedule to the notification. It was argued that Entry 2 of the Schedule to the notification cannot include, by very nature of its meaning, air-conditioning plant because fabrication and installation of the plant is quite different, which is contemplated by Entry 5 of the Schedule to the notification. After referring to the entries of other States mentioned by the Tribunal in its judgment dated December 2, 2002 rendered in Appeal No.16 of 1996 and Second Appeal No.97 of 2001, it was argued that air-conditioning plant is separately mentioned from air-conditioner and A.C. Cooler as a result of which, it is wrong to hold that air-conditioning plant would fall under Entry 2 of the Schedule to the notification. What was pointed out by the learned counsel for the assessee to the Court was that fabrication requires preparation plant, lay-out drawing of the area to be air-conditioned as well as environmental conditions etc. and, therefore, there

is no good reason to exclude fabrication and installation of air-conditioning plant from Entry 5 of the schedule to the notification. The learned counsel emphasized that fabrication and installation of all kinds of plants and machineries as well as repairs thereof is included in Entry 5 and, therefore, the view taken by the Tribunal that the installation of air-conditioning plant would fall within Entry 2 of the Schedule to the notification should not be upheld by this Court. The learned counsel asserted that installation of air-conditioning plant falls within the scope of Entry 5 of the schedule to the notification and not in Entry 2 of the Schedule to the said notification as a result of which, the Tribunal was not justified in applying general principle that if a specific provision is made, that provision is applicable even though the case may fall within the general provisions. The learned counsel emphasized that whenever the words are not defined, common parlance meaning should be adopted by the Court and if common parlance meaning is adopted, it becomes at once clear that air-conditioners and A.C. Coolers are not

included in air-conditioning plant. It was pleaded that the delegated authority had before it three specific entries, i.e.(1) air conditioners, (2) A.C. Coolers, and (3) air-conditioning plant, but the entry relating to air-conditioning plant is omitted while framing composition scheme under Section 55A of the Act which, in turn, indicates that even competent authority never intended to include air-conditioning plant in Entry 2 of the Schedule to the notification and, therefore, the view taken by the Tribunal should not be upheld by this Court. In support of these contentions, the learned counsel for the assessee-company, relied on the decisions in (1) ***Ramavatar Budhaiprasad vs. Assistant Sales Tax Officer, Akola, & Another, 1961 Vol. XII Sales Tax Cases 286;*** (2) ***State of West Bengal & Ors. vs. Washi Ahmed & Ors., 1977 Vol.39 Sales Tax Cases 378***; (3) ***Real Optical Co. vs. Appellate Collector of Customs & Another, 2001 Vol.122 Sales Tax Cases 555;*** and, (4) ***Parle Biscuits (P) Limited vs. State of Bihar & Ors., 2005 Vol. 139 Sales Tax Cases 204***.

5. Mr.Kamal B. Trivedi, learned Advocate

General with Ms.Sangeeta Vishen, learned Assistant Government Pleader, for the Revenue referred to the decision of the Supreme Court in ***Builders' Association of India & Ors. vs. Union of India & Ors., (1989) 2 SCC 645*** and explained that the tax on the sale or purchase of goods includes among other things a tax on the transfer of the property in goods, whether as goods or in some other form, involved in the execution of a works contract and, therefore, before answering the question referred to this Court for its opinion, the Court should ascertain as to what is transferred in the execution of works contract. It was argued that the tax leviable by virtue of Entry 2 of the Schedule to the notification would be attracted to the facts of the case as transfer of air-conditioners and/or A.C. Coolers takes place in execution of a works contract relating to the installation of an air-conditioning plant. The learned Advocate General extensively referred to the meanings of 'air-condition', 'air-conditioner' and 'air-conditioning' from Webster's Encyclopedic Unabridged Dictionary of the English Language; The New Shorter Oxford English Dictionary

on Historical Principles, The Free Encyclopedia of Wikipedia, etc. and pointed out that ‘air-condition’ means to furnish with an air-conditioning system and/or to treat air with such a system whereas ‘air-conditioner’ means an air-conditioning device and ‘air-conditioning’ means a system or process for controlling the temperature, humidity, and sometimes the purity of the air in an interior, as of an office, theater, laboratory, house, or the like, as a result of which, the just finding recorded by the Tribunal that air-conditioning plant would fall within Entry 2 of the Schedule to the notification should be upheld by this Court. The learned Advocate General referred to the documents, which were produced by the assessee before the Tribunal and pleaded that even on the showing of the assessee itself, the air-conditioning plant is a system or a facility which controls the temperature, humidity as well as purity of the air and, therefore, the works contract relating to the installation of the air-conditioning plant by the assessee would fall within Entry 2 of the Schedule to notification. What was emphasized was that there is no difference whatsoever

in device and/or design of the air-conditioners or A.C. Coolers or air-conditioning plants inasmuch as in all the devices, the machine throws cool air in the place covered by the said device and sucks hot air as well as maintains temperature and, therefore, it is wrong to contend that air-conditioners and A.C. Coolers connote only the room air-conditioners or window air-conditioners and nothing more than that. It was argued that an air-conditioner or A.C. Cooler would cover a small area whereas air-conditioning plant covers a large area such as office, theater, laboratory, house or the like and, therefore, it would be wrong to differentiate air-conditioner, A.C. Cooler and the air-conditioning plant on the basis of area covered by their operation. The learned counsel for the Revenue emphasized that notification issued under Section 55A of the Act is in nature of an Exemption Notification and, therefore, it must be construed strictly and in case of doubt, should be construed in favour of the Revenue and, therefore also, it should be held that the works contract of the assessee relating to installation of air-conditioning plant falls within Entry 2 of the

schedule to the notification and not within Entry 5 of the schedule to the said notification. The learned counsel pointed out to the Court that no evidence could be adduced by the assessee before the Tribunal to establish that in common parlance, an air-conditioner or A.C. Cooler or air-conditioning plant have different meanings and, therefore, common parlance test as is sought to be suggested to be applied by the learned counsel for the assessee should not be adopted while interpreting Entries 2 and 5 of the Schedule to the notification. What was pointed out by the learned counsel for the Revenue was that an air-conditioning system is capable of adding and removing humidity and moisture and/or filtering dust and odourants from the space or spaces it serves and as the same function is performed by the air-conditioner or A.C. Cooler, the Court should opine that the works contract of the assessee for installation of air-conditioning plant is covered by Entry 2 of the schedule to the notification. The learned counsel emphasized that there is nothing in Entry 2, which would restrict the meaning of installation of air-conditioner or A.C. Cooler only

to boxes or cabinets in domestic use for cooling and, there being no qualifying clause in Entry 2, it should be held that installation of air-conditioning plant is covered by Entry 2 of the schedule to the notification. The learned counsel for the Revenue asserted that the view taken by the Tribunal that works contract of the assessee relating to the installation of air-conditioning system falls within Entry 2 of the schedule to the notification is eminently just and, therefore, the Reference should be accordingly answered by the Court. In support of these submissions, the learned Advocate General relied on the decisions in (1) ***Collector of C.Ex. vs. Subros Ltd., 1989 (43) E.L.T. 543 (Tribunal)***; (2) ***State of Madras vs. SF Products India Ltd., 1972 Vol.XXIX Sales Tax Cases 454***; (3) ***The Star Trading Co. (Private) Ltd. vs. The State of Bombay 1962 Vol. XIII Sales Tax Cases 102***; (4) ***Anil Ice Factory & Anr. vs. Union of India, 1984 (15) E.L.T. 333 (Guj.)***; (5) ***Sanden Vikas (India) Ltd. vs. Collector of Central Excise, (2003) 4 SCC 699;*** (6) ***Indian Metals & Ferro Alloys Ltd., Cuttack vs. Collector of Central Excise, Bhubaneshwar, 1991 Supp. (1) SCC 125***; (7)

Superintendent of Central Excise, Surat & Ors. vs. Vac Met. Corporation (P) Ltd., A.I.R. 1986 SC 1167; (8) ***M/s.Bombay Chemical Private Limited vs. The Collector of Central Excise, Bombay-I, Bombay, A.I.R. 1995 SCC 1469***; and, (9) ***Liberty Oil Mills (P) Ltd., Bombay vs. Collector of Central Excise, Bombay, (1995) 1 SCC 451***.

6. This Court heard Mr.K.H.Kaji, the learned counsel for the assessee, and Mr.Kamal B. Trivedi, learned Advocate General for the Revenue, at length and in great detail on August 25, 2006. However, the judgment could not be delivered for paucity of time and was reserved. The Court, therefore, now pronounces the judgment reserved.

7. The question arising in the instant reference is whether the assessee's works contract for fabrication and installation of air-conditioning plant falls under Entry 2 and, therefore, taxable at the rate of 15% or whether it falls under Entry 5 and, therefore, taxable at the rate of 5%, of the Schedule to the notification issued under Section 55A

of the Act. A bare perusal of Section 55A of the Act makes it evident that it enables the State Government to fix rates of composition by notification in the official gazette having regard to the incidence of tax on the nature of the goods involved in the execution of total value of works contract. In exercise of powers conferred by Section 55A of the Act, the State Government issued the notification and fixed the rate of composition payable in lieu of the amount of tax mentioned in column (3) of the Schedule in respect of each works contract shown in column (2) of the said Schedule having regard to the incidence of the tax on nature of goods involved in the execution of total value of works contract. As the assessee undertook air-conditioning and refrigeration job for M/s. Anupam Colours & Chemical Industries by works contract dated October 22, 1993, it would be relevant to ascertain the nature of the goods involved in the execution of total value of the works contract. In ***Builders' Association of India & Ors. (supra)***, the Supreme Court has explained as to what is "works contract". From the said decision, it is evident that in ***State of Madras vs. Gannon Dunkerley***

& Company (Madras) Limited, A.I.R. 1958 SC 560 : 9 STC 353, the Supreme Court held that a works contract was an indivisible contract and turnover of the goods used in the execution of the works contract could not, therefore, become exigible to sales tax. It was in order to overcome the effect of the said decision, Parliament amended Article 366 by introducing sub-clause "(b)" of Clause (29-A). Sub-clause (b) of Clause (29-A) states that "tax on the sale or purchase of goods" includes among other things a tax on the transfer of property in the goods (whether as goods in some other form) involved in the execution of a works contract. It does not say that a tax on the sale or purchase of goods includes a tax on the amount paid for the execution of a works contract. It refers to a tax on the transfer of the property in goods (*whether as goods or in some other form*), involved in the execution of a works contract. The emphasis is on the transfer of property in goods. Thus, a transfer of property in goods under sub-clause (b) of Clause (29-A) is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and a

purchase of those goods by the person to whom such transfer is made. The object of the new definition introduced by Clause (29-A) of Article 366 of the Constitution is to enlarge the scope of 'tax on sale or purchase of goods' wherever it occurs in the Constitution so that it may include within its scope the transfer, delivery or supply of goods that may take place under any of the transactions referred to in sub-clauses (a) to (f) thereof wherever such transfer, delivery or supply becomes subject to levy of sales tax. So construed, the expression “tax on the sale or purchase of goods” in Entry 54 of the State List, therefore, includes a tax on the transfer of property in goods, whether as goods or in some other form, involved in the execution of a works contract. When a works contract is executed, the property does not pass as a movable property unless there is an express agreement stating that the properties in such movable will pass to the person who has assigned the contract as and when the goods are used in the construction of the building. In the absence of any such agreement transfer of property in goods passes not as movables as such by accretion and

in an unidentifiable and indivisible manner. In all such cases, it is not possible to disintegrate the contract into a contract for sale of goods and a contract for work and labour only. When a house or a factory or a bridge constructed by a building contractor is handed over to the person who had assigned the contract, what is handed over is conglomerate of all the goods used in the construction of the building, which was different from the specific goods used in the construction. It is not possible to break up the house, factory or bridge, etc., which is constructed by a building contractor into individual items of goods and to tax the transfer of property in each of them.

8. Having ascertained as to what a “works contract” is, as explained by the Supreme Court, it would be necessary to ascertain the nature of the goods involved in the execution of works contract relating to installation of air-conditioners and A.C. Coolers and for repairs thereof, as described in Entry 2 of the schedule to the notification issued under Section 55A of the Act. Before interpreting

the meaning of the words used in Entry 2 and Entry 5 of the Schedule to the notification issued under Section 55A of the Act, it is necessary to trace the history of rate of tax on sale of goods involved in execution of a works contract. Prior to issuance of the notification, regular rate of tax on sale of goods involved in execution of a works contract was as under:

Sr. No.	**Description of works contract**	**Entry No. in Schedule - IIA of the Act**	**Regular rate of tax**
1.	Installation of air-conditioners and A.C. Coolers and for repairs thereof.	67	18%
2.	Furniture and fixtures partitions including contracts for interior decoration and repairs thereof	104	8%
3.	Fabrication and installation of lifts or elevators or escalators and for repairs thereof	120	12%
4.	Fabrication and installation of plant and machinery and repairs thereof	39	8%
5.	Construction of bodies on chassis of Motor vehicles including three wheelers and for repairs thereof	128(5)	4%
6.	Ship building including construction of barges, Ferries, Tugs Trawlers or Dredgers and for repairs thereof	186	4%

On introduction of composition scheme, as contemplated by Section 55A of the Act, rate of composition of tax, i.e. lump sum tax payable under Section 55A in lieu of regular rate of tax on goods

involved in execution of works contract pursuant to the notification is as under:

Sr. No.	Description of works contract	Rate of Composition
1.	Works contract for civil works like construction of building, bridges or roads, and for repairs thereof	2%
2.	Installation of air-conditioners and A.C. Coolers and for repairs thereof	15%
3.	Furniture and Fixtures, partitions including contracts for interior decoration and repairs thereof	5%
4.	Fabrication and installation of lifts or elevators or escalators and for repairs thereof	10%
5.	Fabrication and installation of Plant and Machinery and repairs thereof	5%
6.	Construction of bodies on chassis of motor vehicles including three wheelers and for repairs thereof	2%
7.	Ship-building, including construction of barges, ferries, tugs, trawlers and for repairs thereof	12%

A comparison of the regular rate of tax on sale of goods involved in execution of works contract prior to issuance of the notification and rate of composition of tax, i.e. lump sum tax payable under Section 55A of the Act, would indicate that there is difference of about 2% to 3% in rates of tax on sale of goods involved in execution of relevant works contract.

9. In the affidavit-in-reply filed Mr.N.C.Somesara, S.T.O. (1), City Division 2,

Ahmedabad, to the petition, it is stated that the word 'air-conditioner' as is defined in Oxford's Illustrated Dictionary means 'a system for regulating humidity, ventilation and temperature in a building or a vehicle, and, therefore, the term 'air-conditioner' in Entry 2 includes an air-conditioning system. It is further mentioned in the reply that since Entry 2 specifically embraces the air-conditioning, Entry 5 of the notification would not be applicable to the installation of air-conditioning plant. What is asserted in the reply is that since ultimate purpose of installation of an air-conditioner or an air-conditioning plant is to regulate the humidity and temperature by giving cooling effect, the area of operation of such a device is hardly relevant for the purpose of distinguishing one from another. It is also mentioned in the reply that as per the assessee-company itself, it is "engaged in the business of carrying out jobs involving designs supply and installation of air-conditioning plants", but it is not the case of the assessee that it is engaged in the the business of fabrication of such plant and, therefore, Entry 5

would not be applicable to the facts of the case.

9.1 Having noticed the history of regular rates of tax on sale of goods involved in execution of works contract and difference between the regular rates and lump sum rates under Section 55A on sale of goods involved in execution of works contract, it would be relevant to ascertain as to what is the meaning of words “installation of air-conditioners and A.C. Coolers and for repairs thereof” as appearing in Entry 2 of the Schedule to the notification. It is well settled that for interpreting the meaning of the words used in entries of taxing statute, trade meanings as well as dictionary meanings are required to be considered to reconcile and harmonize the entry. In the light of dictionary, meanings of the words 'air-conditioner', 'air-conditioning' etc. and the materials brought on the record of the Reference as well as the petition, the question referred to this Court will have to be answered.

9.2 As per the Webster’s Encyclopedic Unabridged

Dictionary of the English Language, the word '*air-condition*' means (1) to furnish with an air-conditioning system; (2) to treat (air) with such a system; the word '*air-conditioner*' means an air-conditioning device and the word '*air-conditioning*' means (1) a system or process for controlling the temperature, humidity and sometimes the purity of the air in an interior, as of an office, theater, laboratory, house, or the like; (2) an air-conditioning system or unit. As per The New Shorter oxford English Dictionary on Historical Principles, edited by Lesley Brown, Volume 1 A-M, 1993, the word '*air-conditioned*' means having air-conditioning. The word '*air-conditioner*' means an apparatus for air-conditioning. The word '*air-conditioning*' means the process of cleaning air and controlling its temperature and humidity before it enters a room, building, etc.

9.3 Again, as per The Free Encyclopedia Wikipedia, the '*air-conditioner*' is an appliance, system or mechanism designed to extract heat from an area using a refrigeration cycle. The construction of

a complete system of heating, ventilation, and air conditioning is referred to as HVAC. Some refer to air conditioner or air conditioning as AC or A/C for short. An air-conditioning system equipments may be (1) window or through-wall units; (2) evaporation coolers; (3) absorptive chillers; (4) portable air-conditioners; and, (5) central air-conditioning. The central air-conditioning commonly referred to as *central air* (US) or *air-con* (UK) is an air conditioning system which uses ducts to distribute cooled and/or dehumidified air to more than one room, or uses pipes to distribute chilled water to heat exchangers in more than one room, and which is not plugged into a standard electrical outlet. With a typical split system, the condenser and compressor are located in an outdoor unit; the evaporator is mounted in the air handling unit (which is often a forced air furnace). With a package system, all components are located in a single outdoor unit that may be located on the ground or roof. Central air conditioning performs like a regular air conditioner but may have several added benefits. When the air handling turns on, room air is drawn in from various

parts of the house through return-air ducts. This air is pulled through a filter where airborne particles such as dust and lint are removed. Sophisticated filters may remove microscopic pollutants as well. The filtered air is routed to air supply ductwork that carries it back to rooms. Whenever the air conditioner is running, this cycle repeats continually. Because the central air conditioning unit is located outside the home, it offers a lower level of noise indoors than a free-standing air conditioning unit. Thus, there is no manner of doubt that by executing the works contract relating to installation of air-conditioning plant, what is provided is central air conditioning system/device. Air-conditioning systems are succinctly explained in paragraph 23 of the decision in ***Collector of Central Excise vs. Subros Ltd. (supra).*** As this Court fully concurs with the said explanation, it is proposed to reproduce relevant part of paragraph 23 of the said decision, which is as under:

> "Air-conditioning systems are either unitary or built-up. The window or conditioning system; the entire system is housed in a

single package which contains heat removal, dehumidification, and filtration capabilities. When an electrical heater is built into it with suitable controls, it functions as a year-round air-conditioning system. Unitary air-conditioners are manufactured in capacities as as high as 100 tons and are designed to be mounted conveniently on roofs, on the ground, or other convenient location, where they can be connected by ductwork to the conditioned space.

Built-up or field-erected systems are composed of factory-built subassemblies interconnected by means such as piping, wiring, and ducting during final assembly on the building site. Their capacities range upto thousands of tons of refrigeration and millions of Btu per hr of heating. Most large building are so conditioned.

Another important and somewhat parallel distinction can be made between incremental and central systems. An incremental system serves a single space; each space to be conditioned has its own, self-contained heating-cooling-dehumidifying-filtering unit. Central systems serve many or all of the conditioned spaces in a building. They range from small, unitary packaged systems to serve

single-family residences to large, built-up or field-erected systems serving large buildings.

When many buildings, each with its own air-conditioning system which is complete except for a refrigeration and a heating source, are tied to a central plant that distributes chilled water and hot water or steam, the interconnection is referred to as a district heating and cooling system. This system is especially useful for campuses, medical complexes, and office complexes under a single management.

Conditioning of spaces.- Air temperature in a space can be controlled by radiant panels in floor, walls, or ceiling to emit or absorb energy, depending on panel temperature. Such is the radiant panel system. However, to control humidity and air purity and in most systems for controlling air temperature, a portion of the air in the space is withdrawn, processed, and returned to the space to mix with the remaining air. In the language of the entineer, a portion of the room air is returned (to an air-handling unit) and, after being conditioned, is supplied to the space. A portion of the return air is spilled (exhausted to the outdoors) while an equal quantity (of outdoor air) is brought into the

system and mixed with the remaining return air before entering the air handler.

Typically, the air-handling unit contains a filter, a cooling coil, a heating coil, and a fan in a suitable casing. The filter removes duest from both return and outside air. The cooling coil, either containing recirculating chilled water or boiling refrigerant, lowers air temperature sufficiently to dehumidify it to the required degree. The heating coil, in winter, serves a straightforward heating function, but when the cooling coil is functioning, it serves to raise the temperature of the dehumidified air (to reheat it) to the exact temperature required to perform its function, in micro-cosm, in room units in each space, as part of a self-contained, unitary, air-conditioner, or it may be a huge unit handling return air from an entire building."

9.4 The above meanings and uses of central air conditioning would indicate that the basics and theories of central air-conditioning are not different from those of room air-conditioners, window air-conditioners, split air-conditioners or A.C. Coolers. It may be mentioned that the assessee itself had produced certain literature to show how a central

air-conditioning job is undertaken, supervised, carried out and the type of plant that goes into existence, for consideration of the Tribunal. As per the said material, an air-conditioning plant is not a definite object or goods with an identity, which can be described. As per the said information, 'air-conditioning plant' is basically a system or facility with the user to control temperature, humidity and dust level of the air inside the conditioned premises.

10. The plea that in central air-conditioning system, fabrication has to be undertaken which requires preparation of plant, etc. and, therefore, central air-conditioning system should be treated differently from room air-conditioner or window air-conditioner, etc. cannot be accepted because even in room air-conditioner or window air-conditioner or split air-conditioner or A.C. Cooler, elevation and lay-out of the area requiring conditioning, has to be taken into consideration. Before installing room air-conditioner, window air-conditioner or split A.C. Cooler, one has to take into consideration type of

building such as whether a brick or concrete wall, wall thickness, plaster thickness, glass area, type of glass - plain, etc. Further, orientation of the building which effects heat into the air-conditioned premises cannot be ignored nor adjoining areas surrounding the air-conditioned premises. Therefore, it would not be correct to differentiate between the central air-conditioning and room air-conditioners, etc. on the basis that installation of air-conditioning plant requires preparation of plant whereas no such exercise is required to be undertaken in case of installation of window air-conditioner, etc. Moreover, the basic components, which go into manufacture of air-conditioning plant and room air-conditioner or split air-conditioner are almost similar with difference in size and are not drastically different. The main components in both the systems/devices/units are; (1) the main refrigeration equipment; (2) the air handling unit; (3) cooling tower / air cooled condenser; (4) condenser water pump-set including motor; (5) chilled water pump-set including motor; (6) air distribution system which includes ducting as per sizes and

gauges, design to suit the premises, its hangers, supports, clamps, hanger fasteners, hardwares, grilles to suit the premises along with its fixing arrangements to the false ceiling; (7) return air ducting; (8) piping including valves, flanges, elbows, etc. for water circulation; (9) insulation of pipes; (10) electrical switchboards comprising incoming and outgoing switches, etc.

10.1 The air-conditioning systems are classified according to their construction and operating characters into individual room machines, unitary package machines and central hydronic-air-conditioning system. A room air-conditioner is usually installed through the window. It becomes a part of the building facade. In separated indoor-outdoor unit of split system, the indoor unit houses the supply fan and cooling coil. The outdoor unit houses the compressor and a condenser. Space air is returned to the room air-conditioner through the lower return grille. It is then cooled and dehumidified by the DX-coil during cooling process. The conditioned air is discharged to the space from

the top supply grille. Outdoor air is introduced through a small opening before it is mixed with the return air. Central Air-Conditioning Plant erected at the site of the client and by using different refrigeration equipments are not bought and sold like room/window machines or even splits or package units and cannot be installed like room/split air-conditioners. In the air-conditioning industry, these are undertaken as projects or AC jobs or works contract. However, in view of the above characteristics, the composition/components which go into manufacture of air-conditioner and air-conditioning plant as well as uses, there is no manner of doubt that installation of air-conditioning plant would fall within Entry 2 of the Schedule to the notification and not within Entry 5 of the Schedule to the said notification.

11. The plea that Entry 5 deals with all kinds of fabrication and installation of all kinds of plant and machinery and there is no reason to exclude the installation of air-conditioning plant from Entry 5, cannot be accepted. Entry 2 of the Schedule to the

notification is specific in the sense that it deals with installation of air-conditioners and A.C. Coolers and for repairs thereof, which covers the installation of the air-conditioning plant, whereas Entry 5 which deals with fabrication and installation of plant and machinery and repairs thereof, is general in nature. The fact that the word '*fabrication*' does not appear in Entry 2 of the schedule to the notification or the words '*A.C. Coolers*' follow the word '*air-conditioners*' and, therefore, it should be held that installation of air-conditioning plant would fall under Entry 5 of the Schedule to the notification, but not under Entry 2 of the Schedule to the said notification also cannot be accepted, because, as observed earlier, the delegated legislation has taken installation of air-conditioning plant within the sweep of installation of air-conditioners and A.C. Coolers by providing Entry 2 of the Schedule to the notification. Even otherwise, the basic composition is similar with variation only in size and output.

12. The argument that the legislature had before

it three specific entries, i.e. air-conditioner, A.C. Cooler as well as air-conditioning plant, and the air-conditioning plant is omitted while framing composition scheme and, therefore, it should be held that installation of air-conditioning plant is covered by Entry 5 of the Schedule to the notification, has also no substance. As observed earlier, before introduction of composition scheme, works contract involving the installation of air-conditioners, A.C. Coolers and repairs thereof were being charged at the rate of 18% on sale of goods involved in execution of the said contract. However, after introduction of composition scheme, works contract involving installation of air-conditioners and A.C. Coolers and for repairs thereof is liable to tax @ 15% on sale of goods involved in execution of works contract. In a sense, composition scheme introduced will have to be regarded as an Exemption Notification and will have to be construed strictly in view of the principles enunciated by the Supreme Court in catena of decisions. So construed, there is no manner of doubt that installation of air-conditioning plant would fall within the scope of

Entry 2 of the Schedule to the notification and not within the scope of Entry 5 of the Schedule to the said notification.

13. The contention that in common parlance, air conditioner, room air-conditioner, window air-conditioner, A.C. Cooler, air-conditioning plant, etc. are differently known and, therefore, it should be held that the installation of air-conditioning plant would fall within Entry 5 of the Schedule to the notification cannot be accepted because the common parlance test to suggest that 'installation of air-conditioning plant' is different from installation of room air-conditioner, etc., is not brought on record of the Reference by the assessee and, therefore, there is no common parlance test to fall back upon. Under the circumstances, dictionary meaning will have to be treated as good guidance while deciding the question whether installation of air-conditioning plant would fall under Entry 2 or Entry 5 of the Schedule to the notification. As noticed earlier, the learned counsels for the parties cited several authorities for guidance of this Court,

but this Court is of the opinion that it is not necessary to refer to all of them in detail and unnecessarily burden this judgment. However, this Court proposes to refer to a decision of the Supreme Court rendered in ***Sanden Vikas (India) Ltd. (supra).*** Therein, the appellant was a manufacturer of car air-conditioning kits. The question in the appeal before the Supreme Court was whether the car air-conditioning kit was classifiable under Item 3 or under Item 8 of Exemption Notification dated March 1, 1986. The appellant sought it to be classified under Item 8 while the Revenue classified it under Item 3. The view of the Revenue was upheld by CEGAT. It was contended by the assessee that a car air-conditioning kit comprised only parts and could not be treated as air-conditioning system within the meaning of Item 3. On the other hand, the Revenue contended that inasmuch as the parts put together produced the effect of cooling, it could appropriately be called as air-conditioning system falling under Item 3. The Supreme Court held that as the air-conditioning kit is meant for providing air-conditioning in car and as the description of the goods first mentioned against

column (3) notes air-conditioners, car air-conditioning kit falls within the meaning of air-conditioner against Item No.3 before March 20, 1990. According to the Supreme Court, this position continued till Item 5 was amended and Item 8 was inserted in the said notification where specific entry with regard to parts and accessories of car air-conditioner and car air-conditioning kit was provided. Here in this case, there is no specific entry inserted in the notification with regard to installation of air-conditioning plant. If air-conditioning kit meant for providing air-conditioning in a car is held to fall within the meaning of air-conditioner, there is no reason why the air-conditioning plant should not be accordingly construed. There is nothing in Entry 2 which would restrict the meaning of expression 'installation of air-conditioners or A.C. Coolers and repairs thereof' to window air-conditioner or split air-conditioner, etc., i.e. only boxes or cabinets in domestic house for cooling and closure. In case of a window air-conditioner or split air-conditioner, what is achieved is control of the temperature, humidity and

purity of the air of a small area whereas in case of air-conditioning plant, what is achieved is control of temperature, humidity and purity of the air of a larger area such as an office, theater, laboratory, house or the like.

14. In ordinary case of fabrication and installation of plant and machinery, no production results when the plant and machinery are erected. In other words, it is a simple case of supply of plant and machinery whereas in case of supply of air-conditioning plant, what is done by the contractor is to install a complete unit by itself, which is functional in all respects. Therefore, Entry 2 would cover the case of installation of air-conditioning plant and such an installation would not be covered by Entry 5 of the schedule to the notification. It may be mentioned that the plea based on different entries found in different States, which was initially pressed into service, was given up because on the basis of those entries, Entry 2 and Entry 5 of the notification could not have been interpreted.

15. From the above discussion, this Court finds that the view taken by the Tribunal that the assessee's works contract for fabrication and installation of plant falls under Entry 2 and, therefore, taxable @ 15% and not under Entry 5 under which it is taxable @ 5% of the schedule to the notification issued under Section 55A of the Act, is eminently just and deserves to be upheld.

16. Accordingly, the Reference is answered in the affirmative, i.e. in favour of the Revenue and against the assessee. As the Reference is answered in the affirmative, Special Civil Application No.12508 of 2002 stands disposed of accordingly. *Ad interim relief* granted earlier in Special Civil Application No.12508 of 2002 is hereby vacated. There shall be no orders as to costs in any of the above referred to proceedings.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra